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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of Decision: 28th April, 2025**

+ CM(M) 2470/2024 & CM APPL. 24783/2025

ANIL KUMAR JUNEJA AND ANRPetitioners

Through: Ms. Manpreet Kaur with Ms. Jaya
Goyal, Advocates.

versus

M/S KISHAN CONSTRUCTIONRespondent

Through: Ms. Khushboo Kohli, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM(M) 2470/2024 & CM APPL. 24782/2025 (early hearing)

1. Petitioners seek early hearing of the matter.
2. Learned counsel for the respondent is also present on advance notice.
3. With the consent of both the learned counsel for the parties, matter has been taken up today itself.
4. The point raised in the present petition is very short and precise.
5. Petitioners are defending a suit for recovery filed by M/s Kishan Construction (respondent herein). While defending the abovesaid suit, the defendants/petitioners had also lodged their counter-claim and are seeking damages.
6. When the abovesaid suit and the counter-claim were taken up by the learned Trial Court on 12.02.2024, it dismissed one application filed under Order XVI Rule 3 CPC by defendants/counter-claimants whereby they, merely, wanted to examine three official witnesses.
7. Learned counsel for defendants/counter-claimants (petitioners herein), in all fairness, admits that the defendants should have mentioned the names of these



witnesses at the first available opportunity and to that extent, she admits inaction on the part of the defendants. However, she submits that the case of defendants/counter-claimants is very consistent from day one and the reference about the documents sought to be proved through these official witnesses is specifically mentioned not only in the written statement but also in the counter-claim. She submits that she is only requesting for one effective opportunity in this regard and there is no intention, whatsoever, to delay the matter.

8. Learned counsel for the defendants/counter-claimants submits that, even otherwise, the defendants/counter-claimants are not coming up with any new case, as such, and rather the examination of these witnesses is imperative to reach a justifiable and logical conclusion with respect to relief of the counter-claimants, who seek damages with respect to the building in question.

9. Learned counsel for plaintiff/respondent submits that though the present petition does not have any merit or substance but in order to ensure that the suit reaches its logical end without any further delay, without prejudice to her rights and contentions, she would have no objection if the present petition is allowed with exemplary cost and with a request to the learned Trial Court to record evidence in a time-bound manner. She also submits that since the plaintiff/respondent has already led its evidence in affirmative, in case, the plaintiff/respondent feels any necessity of leading any further evidence in rebuttal, such opportunity may also be kept open.

10. Keeping in mind the overall facts and circumstances of the case and the nature of witnesses sought to be examined and also keeping in mind the fact that reference about the documents sought to be proved through these witnesses is already, adequately, reflected in the pleadings, the present petition is allowed with the following directions:-



- (i) Defendants/counter-claimants are permitted to examine all the three concerned officials, as mentioned in their application moved under Order XVI Rule 3 CPC. However, it will be for the defendants/counter-claimants to take requisite steps in this regard and to ensure their presence before the Court by getting requisite process/summons issued from the Court.
- (ii) Defendants/counter-claimants shall be entitled to only one effective opportunity in this regard. The date(s) in this regard would, however, be fixed by the learned Trial Court, subject to its Board position and convenience.
- (iii) For causing delay in the matter, the defendants/counter-claimants are also burdened with cost of Rs.20,000/- which shall be paid to the opposite side before the learned Trial Court on next date, which is stated to be 08.05.2025. Steps for the purposes of summoning those witnesses be taken on or before 08.05.2025.
- (iv) The learned Trial Court would also give opportunity to lead evidence in rebuttal to plaintiff, in case, any request in this regard is made and where the learned Trial Court also finds it necessary, in view of examination of the abovesaid official witnesses.
11. The petition stands disposed of in the aforesaid terms.
12. All the pending applications also stand disposed of accordingly.
13. The next date of 18.08.2025 stands cancelled.

(MANOJ JAIN)
JUDGE

APRIL 28, 2025/st/js